SINGAPORE REPORTS

INTERNATIONAL ASSOCIATED CO. (PTE.) LTD. v. CHIEF ASSESSOR, SINGAPORE

[O.C.J. (Choor Singh J.) January 23, 1980]

[Singapore — Originating Motion No. 23 of 1979]

Revenue Law — Property Tax — Amendment of Valuation List — Whether Chief Assessor had power to issue Notice pursuant to section 18(2) of Property Tax Act — Property Tax Act (Cap. 144), ss. 2, 9(3), 9(4), 18(1), (2) & (7)(c) & (d).

The appellant in this case appealed against the Chief Assessor's Notice issued on September 29, 1975 pursuant to section 18(2) of the Property Tax Act, which sought to amend the 1975 Valuation List by including therein the subject property together with its annual value of $5,960. The appellants accepted this annual value but they contended that the Chief Assessor was not entitled to include the subject property in the 1975 Valuation List and that such inclusion was wrong in law.

The subject property in this case was a vacant office unit on the 10th floor of International Plaza, a 51 storey multi-purpose building comprising shops, offices and residential units. The unit in question was completed on April 3, 1974. On April 15, 1974 it was granted a Temporary Occupation Licence. The whole of the International Plaza was completed on June 17, 1976. There was permanent structural division between all units in the building and there was no access from one unit to another except by a common corridor. Each unit was thus shut off from the others.

Held, dismissing the appeal: (1) the subject unit was at the material date, both part of an uncompleted building as well as a tenement within the meaning of the Property Tax Act and although it could not be included in the Valuation List by virtue of the provisions of sections 9(3) and 9(4), it was liable to be included in the Valuation List as a tenement because the Act enjoins that every tenement must be included in the Valuation List;

(2) the Notice of September 29, 1975 was valid because on that date there was a relevant inaccuracy in the Valuation List and the Chief Assessor had a duty to remove it. By issuing the Notice he was merely exercising his powers under section 18 of the Property Tax Act to carry out his statutory duty under section 9(1) of the Act of maintaining an accurate Valuation List.

ORIGINATING MOTION.

Arthur Leolin Price Q.C. (*Goh Joon Seng* with him) for the appellants.

James Chia (*Gurbachan Singh* with him) for the respondent.

Cur. Adv. Vult.

Choor Singh J.: This is an appeal against the Chief Assessor's Notice issued on September 29, 1975 pursuant to section 18(2) of the Property Tax Act, which seeks to amend the 1975 Valuation List by including therein the subject property together with its annual value of $5,960. There is no objection to the quantum of the annual value. The appellants accept this annual value but they say that the Chief Assessor is not entitled to include the subject property in the 1975 Valuation List and that such inclusion is wrong in law.

The facts of this matter are not in dispute. The subject property is a vacant office unit on the 10th floor of International Plaza, a 51 storey multi-purpose building comprising shops, offices and residential units. This unit was completed on April 3, 1974. On April 15, 1974, it was granted a temporary occupation licence. The whole of the International Plaza was completed on June 17, 1976 i.e. some 26 months after the unit in question was completed. There is permanent structural division between all units in the building and there is no access from one unit to another except by a common corridor. Each unit is thus shut off from the others.

The issue in the present case is simply this: Can the Chief Assessor enter in the Valuation List a completed but unused office unit in a partially erected building? The appellants say that the unit cannot be assessed and entered in the Valuation List until the whole building is completed. The Chief Assessor contends that it can be assessed and entered into the Valuation List as a tenement before the whole building is completed.

The notice in question was issued under section 18 of the Act, the material portion of which reads as follows: —

"18(1) Where it appears that any Valuation List is or has become inaccurate in any material particular, the Chief Assessor may, on the application of any persons interested, or otherwise, and in the manner hereinafter provided, amend the Valuation List accordingly.

(2) When, in pursuance of subsection (1) of this section, the Chief Assessor considers it desirable that an amendment should be made to any Valuation List he shall give notice thereof to the owner of the property concerned stating what amendment is considered desirable and the date from which it is proposed the amendment shall take effect.

xxx xxx xxx xxx

(7) For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where —

(a) the Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by —

(i) the rental obtained from a tenant in respect of a property previously occupied by the owner;

(ii) the increased or decreased rental obtained in respect of the letting out of that or similar property; or

(iii) the consideration paid or value passing on the sale or transfer directly or indirectly of any estate or interest in that or similar property, including the sale or transfer of seventy-five per cent or more of the issued ordinary shares of a land-owning company, whether or not the Chief Assessor exercises the option given in paragraph (b) of the proviso to the definition of "annual value" in section 2 of this Act;

(b) the Chief Assessor is of the opinion that the rental, if any, obtained from the tenant is lower than the gross amount at which the property could reasonably be expected to be let from year to year;

(c) any new building is erected or any building is rebuilt, enlarged, altered, improved or demolished;

(d) property, not exempted from the provisions of this Act, has not been included in the Valuation List."

It is clear that section 18(1) authorises the Chief Assessor to amend the Valuation List whenever it appears to him that it has become inaccurate in a material particular. And he proceeds to do that by issuing a notice under section 18(2). Section 18(7) is quite clearly a "deeming" provision and sets out some specific instances in which the Valuation List "shall be deemed to be inaccurate in a material particular".

Section 2 of the Act defines "property" to include "houses, buildings, lands and tenements".

The submission on behalf of the respondent is that the subject unit is a "tenement" within the meaning of the Act and is therefore assessable pursuant to the provision of the Act. The appellants have no serious quarrel with this submission. They concede that the subject unit is assessable. The dispute is as to date from which it should be included in the Valuation List. I agree with the view of the Board and the submission of counsel for the respondent that the subject unit is a tenement within the meaning of the Act. The question is, from what date can the Chief Assessor include a tenement in his Valuation List. Should he do it from the date of its completion or from the date of completion of the whole building which contains the tenement.

It is contended on behalf of the respondent that the subject unit being a tenement falls within the meaning of "property" in paragraph (d) of section 18(7), that is, it is property which is not exempted from the provisions of the Act and which has been omitted from the Valuation List, thus making the Valuation List inaccurate. It is claimed that the Chief Assessor can therefore include the tenement in the Valuation List as from the date of completion of the tenement to bring the Valuation List up to date.

For the appellants it is contended that there is specific provision in the Act relating to completed parts of a partially completed building. Reference is made to section 9(3) and section 9(4) of the Act and it is submitted that a completed part of a building such as the subject unit should be included in the Valuation List by the application of section 9(3) or 9(4) of the Act. It is necessary to look at these sections. Section 9(3) provides:

"(3) Each part of a building divided laterally or horizontally into parts in such a manner that the owner, either solely or jointly with other owners, of one part is not also the owner either solely or jointly with the same other owners respectively of any other part, shall for the purpose of this Part of this Act, be deemed to be a building."

Section 9(4) provides:

"(4) Each part of a partially completed building divided laterally or horizontally into parts shall for the purposes of this part of this Act be deemed to be a building if it is used for human habitation or otherwise."

The submission on behalf of the appellants is that section 9(3) has no application because the owner of the subject unit was and still is the owner of other units comprised in the building, and section 9(4) also has no application because at the relevant date the subject unit was not "used for human habitation or otherwise", as it was vacant.

In short, the submission is that the subject unit could have been included in the 1975 Valuation List only if at the relevant date it was no longer in the ownership of the appellants or it had been occupied i.e. used within the meaning of the Act. In such circumstances, the subject unit, although part only of the building, could itself be treated as a "building" under section 9(4) and therefore as a completed "new building" under section 18(7)(c). It is submitted that in this manner, the Act expressly provides for the levying of property tax on completed units which get into separate ownership or are put into use.

The appellants' contention is that the Chief Assessor had no right to invoke the provisions of section 18(7)(d) of the Act when the particular statutory provisions mentioned above have set out very clearly the circumstances in which, during the construction of a building, a *part* of it may become liable to property tax.

The respondent's argument in this case is that the provision in section 18(7)(d) is available to impose tax on a unit as soon as that part is completed even though the provisions of sections 9(3) and 9(4) were inapplicable. The appellants answer this by submitting that the application of section 18(7)(d) would render inapplicable and otiose the particular provisions prescribing the circumstances in which parts of an incompleted building may be taxable and that those particular provisions would always be overridden by section 18(7)(d) and would be mere surplusage.

The short answer to all this is that the subject unit was at the material date, both part of an uncompleted building as well as a tenement within the meaning of the Act and although it could not be included in the Valuation List by virtue of the provisions of sections 9(3) and 9(4) it was liable to be included in the Valuation List as a tenement because the Act enjoins that every tenement must be included in the Valuation List. Furthermore, sections 9(3) and 9(4) are "deeming" sections and they merely provide when a part of a building can be deemed to be a building. The amendment of a Valuation List is dealt with by section 18 and that is what we are concerned with in this case and not with the payment of tax.

The main submission of the appellants is based on the maxim *generalia specialibus non derogant* i.e. the specific overrides the general. This submission was also made before the Valuation Review Board which has dealt with it as follows:

"Another submission for the appellants is founded on the maxim *generalia specialibus non derogant*. As we understand the submission, it is that as section 18(7)(c) of the Act deals with "new buildings", a particular kind of property, the Chief Assessor cannot rely on section 18(7)(d) of the Act which is of a general nature, as the particular overrides the general. We find that there is no merit in this submission. In our judgment, there is no scope in section 18(7), of the Act for the application of the maxim, for what the subsection provides is to spell out specific cases when a Valuation List shall be deemed to be inaccurate in a material particular. Paragraph (d) is not of a general nature. It deals with another particular case not spelt out in paragraphs (a), (b) and (c) of the subsection."

I am in entire agreement with the above view of the Board. Section 18 as a whole gives the Chief Assessor wide powers to amend the Valuation List. Paragraphs (a) to (d) of section 18 subsection (7) spell out specific instances in which a Valuation List is to be deemed to be inaccurate. Paragraph (d) is not a general provision and there is no room for the application of the maxim *generalia specialibus non derogant*.

In my judgment, the crucial question in this case is whether on September 29, 1975 when the Chief Assessor issued the notice in question, he had reasonable grounds to believe that the 1975 Valuation List had become inaccurate in any material particular. On that date the subject unit had been physically com-

pleted. A Temporary Occupation Licence had been issued for its occupation. It was ready for use as a tenement. The fact that it was on that date neither in use nor was its ownership transferred is irrelevant in my opinion for the purposes of section 18. What is important for the purposes of section 18 is that a tenement existed and the Chief Assessor was not only well within his powers in issuing the notice in question but was also under a statutory duty to do so by virtue of section 9(1) of the Act which requires him to prepare and maintain a list of "all houses, buildings, lands and tenements". Failure to issue the notice would have been breach of a statutory duty because he could have been accused of deliberately omitting to amend the Valuation List and including in it a tenement the existence of which he very well knew.

Lastly, the problem in this case as already pointed out is not a tax collection problem. It is not whether tax is payable or not payable on the subject unit or payable from what date. The issue is simply whether or not the Chief Assessor was within his powers in issuing the notice in question. If he was, then it is a valid notice. The consequences that follow the issue of a notice under section 18(2) of the Act are not in issue in this case. Inclusion of a property in the Valuation List and payment of property tax on it are two different things under the Act. As stated earlier we are not concerned in this case with the latter.

For the reasons that I have given, I hold that the notice dated September 29, 1975 is valid because on that date there was a relevant inaccuracy in the Valuation List and the Chief Assessor had a duty to remove it. By issuing the notice he was merely exercising his powers under section 18 of the Act to carry out his statutory duty under section 9(1) of the Act of maintaining an accurate Valuation List.

The appeal is dismissed with costs. I am grateful to both counsel for their assistance in providing written submissions which have been of considerable help.

Appeal dismissed.

Solicitors: *Chan, Goh & Co.*

CLAIROL INCORPORATED v. TOO DIT COMPANY

[O.C.J. (Simnathuray J.) February 6, 1980]
[Singapore — Civil Suit No. 2851 of 1976]

Passing-off — Objection by plaintiffs/manufacturers of herbal shampoo as to get-up and label of defendant's product — Whether particular get-up used by plaintiffs had become associated exclusively with their goods — Question of fact.

The plaintiffs in this case were manufacturers of a herbal shampoo under the trade name "Clairol". Since November 1972, through their sister company, Bristol Myers (Singapore) Pte. Ltd., they have been marketing Clairol in Singapore.

The bottles of the shampoo were transparent plastic. They were of different sizes and had three different formulations which were distinguished by different coloured caps on the bottles. The colour of the borders of labels were different for the different formulations. The trade name "Clairol" was on the label and there were descriptive words on it. On the label was a trade mark, a graphic design of a young woman in a pool surrounded by green leaves and coloured flowers.

The defendant, a company registered in 1973 manufactured shampoo under a trade name "Backer" and a trademark which was registered in 1963. In 1976 the defendant went into herbal essence shampoo. The shampoo was sold in bottles with green caps which were of the same size and shape as the bottle, P157, of the plaintiffs. The label on the defendant's bottle P158, was similar in form and colour to the label on P157. So were the descriptive words on it. But the trade name on the bottle was "Backer" and, instead of a young girl in a pool of water, the defendant's label had the trade mark, a yellow circle and in it the device of a bent arm holding an arrow. There were leaves and flowers surrounding the circle about alike but different in size to those on P157.

The plaintiffs took objection to the get-up of the defendant's product and claimed passing-off and infringement of copyright against the defendant.

Held, dismissing the plaintiffs' claim: (1) this was not the case where a particular get-up of goods had been for a long time, for many years, on the market, so as to become identified in course of time with the plaintiffs' goods and with no others, so that that get-up almost of necessity was identified in the market or amongst the public as representing the plaintiff's goods;

(2) the said two labels unquestionably did not resemble each other. It was the different trade names and trade marks of the two products that distinguished each of them;

(3) the plaintiffs had not made out a case of reputation in the get-up of their product.

Cases referred to:-

(1) *Asian Organisation Ltd.* v. *White Hudson & Co.* [1962] M.L.J. 139 @ 140-141.

(2) *White Hudson & Co.* v. *Asian Organisation Ltd.* [1965] 1 M.L.J. 186 @ 189.

(3) *Payton & Co. Ltd.* v. *Snelling, Lampard & Co. Ltd.* (1900) 17 R.P.C. 48. See [1901] A.C. 308.

(4) *Payton & Co. Ltd.* v. *Titus Ward & Co. Ltd.* (1900) 17 R.P.C. 58 @ 64.

(5) *J.B. Williams Company* v. *R. Bronnley & Co. Ltd.* (1909) 26 R.P.C. 765 @ 771.

(6) *Boh Plantations Sdn. Bhd.* v. *Gui Nee Chuan & Ors.* [1975] 2 M.L.J. 213 @ 215.

CIVIL SUIT.

Miss C.A. Remedios for the plaintiffs.

Quek Kai Kok for the defendant.

Cur. Adv. Vult.

Simnathuray J.: In this passing-off action and for infringement of copyright, the plaintiffs, Clairol Incorporated, a company incorporated in the United States of America, are manufacturers of a herbal essence shampoo under the trade name "Clairol". Since November 1972, through their sister company, Bristol-Myers (Singapore) Private Limited, they have been marketing Clairol in Singapore.

The shampoo is packed in transparent plastic bottles of different sizes and have three different formulations which are distinguished by different caps on the bottles. The colours of the caps are white, green or yellow. The exhibit P157 tendered in court is a bottle, one of the three sizes, with a green cap.

The bottles have white labels, and the one on the bottle, P157, has a green border. From the photographs in the Agreed Bundle, it is seen that the colours of the borders of labels differ for the different formulations. The trade name "Clairol" is on the label, and there are descriptive words on it. On the label also is a trade mark, a graphic design of a young woman in a pool surrounded by green leaves and coloured flowers.